FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANN DANIEL; LEONARD HILL,
Plaintiffs-Appellants,

v.

No. 99-56887

COUNTY OF SANTA BARBARA; ALL PERSONS UNKNOWN, CLAIMING ANY RIGHT, TITLE ESTATE LIEN OR INTEREST IN OR TO THE W/IN DESCRIBED PROPERTY; DOES, 1-1000 inclusive,
Defendants-Appellees.

D.C. No. CV 98-09453-MMM

OPINION

Appeal from the United States District Court
for the Central District of California
Margaret M. Morrow, District Judge, Presiding

Argued and Submitted
June 4, 2001--Pasadena, California

Filed March 12, 2002

Before: Stephen S. Trott, M. Margaret McKeown, and
William A. Fletcher, Circuit Judges.

Opinion by Judge William A. Fletcher

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COUNSEL

Steven A. Amerikaner, Hatch & Parent, Santa Barbara, California, for the plaintiffs-appellants.

Virginia R. Pesola and William M. Dillon, County of Santa Barbara, Santa Barbara, California, for the defendants-appellees.

Peter H. Kaufman, Attorney General's Office, San Diego, California, for Amicus California Coastal Commission.

OPINION

W. FLETCHER, Circuit Judge:

Appellants Ann Daniel and Leonard Hill ("the Daniels") purchased beachfront property in Santa Barbara County ("the County") in 1997. In 1974, Carl Johnson, one of the Daniels' predecessors in interest, made a 25-year "firm, continuing" Offer to Dedicate to the County a five-foot wide pedestrian and bicycle easement across the property. In 1977, Johnson renewed the offer. These two Offers to Dedicate were exacted by the County in return for granting permits to Johnson to divide and then to build on the property. In 1987, W. Bruce and Darleine Bucklew ("the Bucklews"), also predecessors in interest, made a 25-year "irrevocable" Offer to Dedicate the same five-foot easement. All three Offers to Dedicate were matters of public record.

In 1998, shortly after the Daniels' purchase of the property (and within the 25-year periods of all three Offers to Dedicate), the County accepted the Offer to Dedicate made by the Bucklews. The Daniels challenged the County's action in federal district court under 42 U.S.C. § 1983, alleging a violation of the Takings Clause of the federal Constitution. They also

alleged violations of state law. The County successfully moved to dismiss the complaint, and the Daniels appeal the dismissal of their § 1983 claim. We affirm the district court.

I

In 1997, the Daniels purchased beachfront property in Santa Barbara County that had once been part of a larger parcel owned by Johnson. In 1973 and 1974, Johnson had divided the original parcel into four separate parcels; the division included a thirty-foot-wide driveway and a five-foot-wide passageway to the beach for the common use of the owners of the four parcels. A regional commission of the California Coastal Zone Conservation Commission**1** ("State Commission") approved the division, conditioned on Johnson's:

> offer[ing] for dedication to the County of Santa Barbara or its successor in jurisdiction, for recreational pedestrian and bicycle access an easement 5' in width from Padaro Lane to the mean high tide line . . . . Said offer shall be a <u>firm continuing offer of dedication</u> which is not rejected or vitiated by failure to accept or purported rejection for a period of 25 years, unless the County has in the meantime provided beach access within a distance of 300 yards upcoast or downcoast of this parcel. The offer of dedication shall be conditioned on assumption by the County of Santa Barbara or its successor, of the burden of maintenance of the easement and the beach area to which access is provided, together with the burden of public liability on the easement.

(Emphasis added). Johnson appealed the imposition of this Firm Continuing Offer to Dedicate ("FCOTD") to the State

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1 The California Coastal Zone Conservation Commission was created in 1972. Cal. Pub. Res. § 27200 (repealed 1977). In 1977, it became the California Coastal Commission. Cal. Pub. Res. §§ 30105, 30300.

Commission, which affirmed the regional commission's decision. Johnson brought no judicial challenge to the administrative decision.

In 1977, Johnson applied to the California Coastal Commission ("Coastal Commission") for a permit to build a house on the parcel that is now owned by the Daniels. The permit was approved by the Coastal Commission, conditioned on a renewal of the 25-year FCOTD described above. Johnson built the house under the permit in 1978, and he did not challenge the imposition of the renewed FCOTD either administratively or judicially.

The Bucklews owned the parcel on which Johnson built the house as successors in interest. In August 1987, in response to a demand by the Coastal Commission, the Bucklews signed a 25-year Irrevocable Offer to Dedicate ("IOTD") the same five-foot easement described in the two FCOTDs granted by Johnson. The Bucklews did not challenge the Commission's demand for the IOTD either administratively or judicially.

The Daniels purchased the Johnson/Bucklew property in 1997. On September 15, 1998, the County notified them that on October 6, 1998, it would consider whether to accept the Bucklews' 1987 IOTD. On October 5, 1998, the Daniels unsuccessfully attempted to rescind it. On October 20, 1998, the County Board of Supervisors adopted a resolution accepting the 1987 IOTD.

In November 1998, the Daniels filed suit against the County for declaratory and injunctive relief under 42 U.S.C. § 1983, alleging a physical taking in violation of the Takings Clause of the Fifth Amendment, as applied to the states by the Fourteenth Amendment. They also alleged several violations of state law. On motion by the County, the district court dismissed the takings claim. It held that the Daniels lacked standing because all the Offers to Dedicate were attached to the property at the time they purchased it. Alternatively, the

district court held that any takings claims accrued in 1974 and 1977, and in any event no later than 1987, and were therefore time-barred. Finally, the district court held that even if the Daniels had standing and their takings claim was not time-barred, the claim would not be ripe because the Daniels could not allege that the state had refused to compensate them or their predecessors for the alleged taking. The district court then dismissed the supplemental state claims without prejudice pursuant to 28 U.S.C. § 1367(c). The Daniels appeal the dismissal of their takings claim.

II

We review questions of law de novo. McBride v. PLM Int'l, Inc., 179 F.3d 737, 741 (9th Cir. 1999). "A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle it to relief." Williamson v. Gen. Dynamics Corp., 208 F.3d 1144, 1149 (9th Cir. 2000)."All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party." Burgert v. Lokelani Bernice Pauahi Bishop Trust, 200 F.3d 661, 663 (9th Cir. 2000). Dismissals for failure to state a claim or for lack of standing are reviewed de novo. Williamson, 208 F.3d at 1149; Stewart v. Thorpe Holding Co. Profit Sharing Plan , 207 F.3d 1143, 1148 (9th Cir. 2000). Dismissal on statute of limitations grounds is reviewed de novo. Ellis v. City of San Diego, 176 F.3d 1183, 1188 (9th Cir. 1999). Ripeness is a question of law reviewed de novo. Natural Res. Def. Council v. Houston, 146 F.3d 1118, 1131 (9th Cir. 1998).

III

Under the Takings Clause of the Fifth Amendment, the government may not take "property . . . for public use, without just compensation." U.S. Const. amend. V. The Takings Clause is applied to the states through the Fourteenth Amendment. The clause "was designed to bar Government from

forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." Armstrong v. United States, 364 U.S. 40, 49 (1960). For the reasons that follow, we agree with the district court that the County's acceptance of the Bucklews' 1987 IOTD was not a taking of the Daniels' property.

A

In order to evaluate the Daniels' takings claim, we first examine the takings claims of their predecessors in interest, Johnson and the Bucklews. As we explain in this section, either Johnson and the Bucklews never acted to create ripe takings claims, or, alternatively, they had ripe takings claims on which they never brought suit. In either event, Johnson and the Bucklews would now be time-barred from pursuing takings claims arising out of the exaction of the FCOTDs and IOTD, and the Daniels, as their successors in interest, are similarly time-barred.

Before the Supreme Court's decision last Term in Palazzolo v. Rhode Island, 121 S.Ct. 2448 (2001), it would have been plausible to hold under Williamson County Regional Planning Comm'n v. Hamilton Bank, 473 U.S. 172 (1985), that Johnson and the Bucklews never created ripe takings claims because they failed to pursue their state administrative and judicial remedies. The Court stated in Williamson County, "[I]f a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation . . . . [A] property owner has not suffered a violation of the Just Compensation Clause until the owner has unsuccessfully attempted to obtain just compensation through the procedures provided by the State for obtaining such compensation . . . ." Id. at 195. We have construed Williamson County to require, in effect, that a would-be takings claimant first exhaust his or her state remedies. See, e.g., Carson Harbor Village Ltd. v. City of Carson,

37 F.3d 468, 474 (9th Cir. 1994) ("Williamson requires a claimant to `seek compensation through the procedures the State has provided for doing so' before turning to the federal courts." (quoting Williamson, 473 U.S. at 174-75)), overruled on other grounds by WMX Technologies, Inc. v. Miller , 104 F.3d 1133 (9th Cir. 1997).

If exhaustion of all available state administrative and judicial procedures is required to create a ripe takings claim, as Williamson County seems to indicate, Johnson and the Bucklews failed to act to create ripe claims. Johnson brought an administrative challenge to the 1974 FCOTD, but he failed to appeal the adverse administrative decision to the state courts. Johnson and the Bucklews never bought any administrative challenge to the 1977 FCOTD, or to the 1987 IOTD. Because they never brought any administrative challenge, there were perforce no adverse administrative decisions they could have appealed to the state courts. Johnson and the Bucklews thus failed to create ripe takings claims under Williamson County, and the time in which they could have created such claims has long since expired.

However, Williamson County's view of ripeness for takings claims does not appear to have survived the Supreme Court's decision last Term in Palazzolo. The Court in Palazzolo explained that the ripeness holding of Williamson County is not an exhaustion requirement per se. Rather, it is a requirement only that the "land-use authority [be given] an opportunity, using its own reasonable procedures, to decide and explain the reach of a challenged regulation." 121 S.Ct. at 2459. "[O]nce it becomes clear that the agency lacks the discretion to permit any development, or the permissible uses of the property are known to a reasonable degree of certainty, a takings claim is likely to have ripened." Id. State-law ripeness or exhaustion requirements may independently limit the ability of a property owner to bring a takings claim, but these requirements are distinct from federal ripeness requirements. See id. at 2462.

[3] Under Palazzolo's narrowing construction of Williamson County, it appears that Johnson had a ripe takings claim once the State Commission affirmed the 1974 FCOTD. Further, given the existence of the administrative affirmance of the 1974 FCOTD, it is likely that ripe takings claims existed as soon as the Commission exacted the 1977 FCOTD and the 1987 IOTD, even without the necessity for an administrative challenge, for those exactions were essentially the same (except for duration) as the 1974 FCOTD. Now that Palazzolo appears to have pushed to an earlier time the point at which a takings claim becomes ripe, the date on which takings causes of action accrue for purposes of the statute of limitations might be a somewhat difficult question. But we need not attempt an answer here. It is sufficient for our purposes to point out that the last offer to dedicate--the 1987 IOTD--was exacted ten years before the Daniels purchased the property. Under any possible accrual date for a takings claim based on the IOTD, the statute of limitations for a § 1983 claim has now expired.

B

The Daniels purchased their property with notice of the FCOTDs and IOTD. They cannot, by virtue of their purchase, obtain greater rights than those held by their predecessors in interest. They therefore cannot bring the time-barred state administrative and judicial challenges, or the § 1983 takings challenge, that Johnson and the Bucklews failed to bring. Indeed, the Daniels do not seek to revive the takings claims of their predecessors in interest. Rather, they bring a takings claim on their own behalf, which they contend arises out of the County's 1998 acceptance of the 1987 IOTD. They contend that the County's acceptance of the IOTD--in effect, the County's exercise of its option--is an action that, if uncompensated, constitutes a taking.

We are willing to assume that, under the reading of Williamson County provided in Palazzolo, the Daniels have satis-

fied federal ripeness concerns. To state it mildly, it is "known to a reasonable degree of certainty" what the County intends to do. Palazzolo, 121 S.Ct. at 2459. We are not sure, however, whether the Daniels have satisfied state-law prerequisites to bringing a takings claim in federal court. The Court in Palazzolo was careful to distinguish federal ripeness rules from reasonable state-law exhaustion requirements. In holding that it could proceed to the merits of the takings claim, the Court noted explicitly that "neither the agency nor a reviewing state court has cited non-compliance with reasonable state law exhaustion . . . processes" as an obstacle to federal court adjudication. Id. at 2462. In this case, the Daniels have done little to present their objections to state administrative and judicial bodies. They have not sought compensation from any county or state administrative body; beyond presenting objections to the County Board of Supervisors, they have not challenged the authority of the County to accept the dedication; and they have not brought any challenge in state court.

Nonetheless, we think that it is unlikely that there are state-law prerequisites that the Daniels have not satisfied. They do not seek monetary compensation from the county in this § 1983 suit but, rather, a declaratory judgment and an injunction. Moreover, exhaustion of state administrative remedies is not normally a prerequisite to claims brought under 42 U.S.C. § 1983. See Patsy v. Board of Regents of the State of Florida, 457 U.S. 496 (1982). However, the statement in Palazzolo concerning such state-law prerequisites is short and somewhat cryptic, and the parties in this case have not had a chance to develop a record on this point because Palazzolo was decided after their appeal was taken from the district court's decision. It is at least conceivable that there are applicable state-law prerequisites that the Daniels have failed to satisfy. We therefore merely assume without deciding that the Daniels have satisfied any state-law prerequisites that might prevent them from presenting their takings claims on the merits.

[5] Turning to the merits, we begin by noting that it is established law that a taking occurs when the option to take an easement is granted, not when the option is exercised. See, e.g., Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1028-29 (1992) ("Where `permanent physical occupation' of land is concerned, we have refused to allow the government to decree it anew (without compensation), no matter how weighty the asserted `public interests' involved . . . --though we assuredly would permit the government to assert a permanent easement that was a pre-existing limitation upon the landowner's title." (emphasis in original) (internal citation omitted)); United States v. 30.54 Acres of Land , 90 F.3d 790, 792 (3d Cir. 1996) ("Because the navigational servitude was a preexisting limitation on the landowners' title to riparian land, we hold that the Corps' exercise of the servitude . . . was not a taking[.]").

When the Daniels purchased their property in 1997, the County had already exacted the FCOTDS and the IOTD from their predecessors in interest. These were "firm, continuing" and "irrevocable" Offers to Dedicate. In effect, these were irrevocable options. If the County was willing to maintain the easement and the beach area to which it gave access, and to carry the burden of "public liability on the easement," it had irrevocable and unqualified options to accept the dedication of the easement. As indicated in Lucas and in 30.54 Acres of Land, the County did not effect a taking when it exercised one of the options. The taking, if any, had been effected when the County was granted the option.

The existence of the FCOTDs and IOTD was a matter of public record when the Daniels purchased the property, and we may presume that their purchase price reflected that fact. As we stated in Carson Harbor, "A landowner who purchased land after an alleged taking cannot avail himself of the Just Compensation Clause because he has suffered no injury. The price paid for the property presumably reflected the market value of the property minus the interests taken. " 37 F.3d at

476. Palazzolo indicates that in some circumstances a purchaser may have a valid takings claim even if his or her purchase price was discounted to reflect existing land-use regulations, but we believe that the reasoning of Palazzolo does not apply to a case like the one now before us.

In Palazzolo, the landowner took ownership of property that was already subject to existing state regulations restricting the use of wetlands. The landowner later sought approval for a specific use of the property, which the State refused, pursuant to the regulations. The state court held that there was no taking because the landowner's investment-backed expectations included the reduction in the fair market value that resulted from the regulations that were in existence when the property was acquired. The Supreme Court condemned the state court's "single, sweeping, rule" under which a "purchaser or a successive title holder like petitioner is deemed to have notice of an earlier-enacted restriction and is barred from claiming that it effects a taking." 121 S.Ct. at 2462. "A blanket rule that purchasers with notice have no compensation right when a claim becomes ripe is too blunt an instrument to accord with the duty to compensate for what is taken." Id. at 2463.

Palazzolo thus rejected the state court's"blanket rule" that would have found no taking whenever a purchaser was aware of existing land-use regulations that reduced the market value of property. But Palazzolo did not adopt the converse of that rule. That is, it did not adopt a rule that would find a taking whenever there are pre-existing restrictions on land use that reduce market value. If that were the rule, no land-use restriction would ever be safe from a takings challenge. Every new purchaser could bring a takings challenge even if there had been a taking for which the prior owner had already been compensated; even if the prior owner had already litigated and lost a takings challenge to that restriction; or even if the prior owner had allowed application limitations periods to

lapse without creating a ripe takings claim or challenging an already-ripe claim.

The facts of Palazzolo were substantially different from those in this case, and the Supreme Court's rejection of the state court's "blanket rule" in that case does not require that we find a valid takings claim here. In Palazzolo , the taking, if there was one, was regulatory rather than physical. Moreover, no taking occurred until the specific proposal was rejected, after ownership of the property changed hands. In this case, the takings, if there were any, were physical rather than regulatory, and they took place when the FCOTDs and IOTD were exacted from Johnson and the Bucklews, long before ownership changed hands.

In sum, in Palazzolo, the landowner took ownership of the property subject to pre-existing wetlands regulations that had the potential, in the context of a specific proposed project, later to effect a regulatory taking. In this case, the Daniels purchased their property subject to the County's pre-existing options to accept dedication of an easement, which were already-accomplished physical takings. The Daniels, who purchased with knowledge of the County's options to accept the easement, may not, by virtue of that purchase, revive their predecessors' time-barred claims for those takings.

AFFIRMED.